



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GROVER SELLERS  
ATTORNEY GENERAL

Honorable John R. Shook  
Criminal District Attorney  
Bexar County  
San Antonio, Texas

Dear Mr. Shook:

Opinion No. 0-5839  
Re: Constitutionality and effect  
of H. B. No. 350, 45th Legis-  
lature, Regular Session.

Your request for an opinion upon the above  
subject-matter is as follows:

"1. Is H. B. No. 350, Acts 1943, 45th  
Leg. page 689, ch. 382 (codified as Article  
1970-329) constitutional and valid?

"2. Is Article 1944 still effective  
in counties included within the terms of  
H. B. No. 350?

"H. B. No. 350 was passed in 1943 to  
take the place of a similar Act, H. B. 465,  
Acts 1941, 47th Leg. ch. 380, which it ex-  
pressly repealed. The constitutionality of  
the former Act was upheld in a lengthy opin-  
ion No. 0-5407, rendered by Harold McCracken,  
Assistant Attorney General and approved by  
you on May 2, 1941.

"The constitutionality of H. B. No. 350  
has been questioned, because of the fact that  
the caption of the law reads:

"'An Act providing that judges of the  
county courts at law in counties of less  
than 500,000 population may act. ...'  
and it does not contain this phrase:

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"According to the last preceding or any future Federal Census."

"This phrase however is contained in the body of the law.

"H. B. No. 350 provides that it is not intended to repeal any law providing for the election or appointment of a special county judge but that it is cumulative of and in addition to such laws. H. B. No. 465 contained no such provision."

Your first question is answered in the affirmative.

It is not the office or function of a title to a bill to do more than express the subject of the bill. It is not required to set forth the details of the treatment of that subject -- that belongs to the bill itself. The title to House Bill No. 350 declares:

"AN ACT providing that judges of the County Courts at law in counties of less than five hundred thousand (500,000) population may act for the County Judge of the county in any juvenile, lunacy, probate and condemnation proceeding or matter, and also may perform any and all other ministerial acts required by law of the County Judge, during the absence, inability or failure of the County Judge for any reason to perform such duties; \*\*\*."

Section 1 of the Act declares:

"That the judge of any County Court at law in any county having a population of less than five hundred thousand (500,000) inhabitants, according to the last preceding, or any future Federal census, may act for the County Judge of the county in any juvenile, lunacy, probate

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and condemnation proceeding or matter, and also may perform for the County Judge any and all other ministerial acts required by the laws of this State of the County Judge, during the absence, inability or failure of the County Judge for any reason to perform such duties;  
". . ."

Section 1, therefore, merely supplies the means of ascertaining the population of a county -- that is, by "the last preceding or any future Federal census" -- and is certainly germane, if not essential, to the validity of the Act.

Article 1934 of the Revised Civil Statutes mentioned in your second question is as follows:

"If a county judge fails to appear at the time appointed for holding the court, or should he be absent during the term or unable or unwilling to hold the court, a special county judge may be elected in like manner as is provided for the election of a special district judge. The special county judge so elected shall have all the authority of the county judge while in the trial and disposition of any case pending in said court during the absence, inability, or such refusal of the county judge. Similar elections may be held at any time during the term, to supply the absence, failure or inability of the county judge, or any special judge, to perform the duties of the office. When a special county judge shall have been so elected, the clerk shall enter upon the minutes of the court, a record such as is provided for in like cases in the district court."

"That it is not intended by this Act to repeal any law providing for the election and/or appointment of a special County Judge, but this Act shall be cumulative of and in addition to, such law or laws."

This answers your second question. There is no irreconcilable conflict between Article 1934 and House Bill No. 350 that could operate to repeal Article 1934 by necessary operation of law or implication, especially in view of Section 4 of House Bill 350, above quoted.

We express no opinion, nor does this statement imply any intimation, as to that provision of House Bill No. 350, which confers upon judges of County Courts at Law authority to act for the County Judge "in any juvenile" proceeding under the terms of Senate Bill 44 by the 43rd Legislature at its Regular Session. The constitutionality and construction of that Act is now before the Supreme Court on a writ of error in cause No. 8205 - Billy Dandy et al, petitioners, v. John W. Wilson et al, respondents.

Very truly yours

APPROVED FEB 9, 1944

ATTORNEY GENERAL OF TEXAS

*John A. Shook*  
ATTORNEY GENERAL OF TEXAS

By

*Osie Speer*  
Osie Speer  
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OS-MR

